

A P P E A R A N C E S: (Continued)

NIGH GOLDENBERG RASO & VAUGHN, PLLC
BY: DANIEL A. NIGH, ESQUIRE
14 Ridge Square NW, Third Floor
Washington, D.C. 20016
Co-Lead Class Counsel for Third-Party Payor Economic Loss

PRETI FLAHERTY BELIVEAU & PACHIOS, CHARTERED LLP
BY: GREGORY P. HANSEL, ESQUIRE
One City Center, PO Box 9546
Portland, Maine 04112
Co-Lead Class Counsel for Third-Party Payor Economic Loss

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
BY: NINA R. ROSE, ESQUIRE
1440 New York Avenue, N.W.
Washington, D.C. 20005
Counsel for Defendants Zhejiang Huahai Pharmaceutical Co.,
Ltd., Huahai U.S., Inc., Princeton Pharmaceutical, Inc., and
Solco Healthcare U.S., LLC (collectively ZHP)

GREENBERG TRAURIG LLP
BY: GREGORY E. OSTFELD, ESQUIRE
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Counsel For Defendants Teva Pharmaceutical Industries Ltd.,
Teva Pharmaceuticals USA, Inc., Actavis LLC, Actavis Pharma,
Inc. (collectively Teva)

WALSH PIZZI O'REILLY FALANGA LLP
BY: CHRISTINE I. GANNON, ESQUIRE
Three Gateway Center, 100 Mulberry Street, 15th Floor
Newark, New Jersey 07102
Counsel for Defendants Teva Pharmaceutical Industries Ltd.,
Teva Pharmaceuticals USA, Inc., Actavis LLC, Actavis Pharma,
Inc. (collectively Teva)

NORTON ROSE FULBRIGHT US LLP
BY: D'LESLI DAVIS, ESQUIRE
2200 Ross Avenue
Suite 3600
Dallas, Texas 75201
Counsel for Defendant Mckesson Corp.

(Appearances continued onto next page)

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ULMER & BERNE LLP
BY: JEFFREY D. GEOPPINGER, ESQUIRE
600 Vine Street, Suite 2800
Cincinnati, Ohio 45202
Counsel for Wholesaler Defendants and AmerisourceBergen

BARNES & THORNBURG, LLP
BY: KARA KAPKE, ESQUIRE
11 South Meridian Street
Indianapolis, IN 46204
Counsel for Retailer Defendants and CVS Pharmacy, Inc., and
Walmart, Walgreens

HILL WALLACK, LLP
BY: WILLIAM MURTHA, ESQUIRE
21 Roszel Road
Princeton, New Jersey 08540
Counsel for Defendants Hetero Drugs and Hetero Labs

Also present:

Larry MacStravic, The Courtroom Deputy

Loretta Smith, Esquire, Judicial Law Clerk to the Honorable
Robert B. Kugler (Ret.)

Ellie Norris

1 (PROCEEDINGS held via remote TEAMS videoconferencing
2 before the Honorable Thomas I. Vanaskie (Ret.), Special Master,
3 at 4:31 p.m. as follows:)

4 THE COURT: All right. Can you all hear me?

5 THE COURT REPORTER: I can, Your Honor.

6 MR. OSTFELD: Yes, Judge, we can hear you.

7 MR. SLATER: Yes, Judge.

8 THE COURT: All right. Good.

9 All right. Now is the time that we set for argument
10 on this issue related to Motion in Limine 34.

11 And the question, as I understand it, the question is
12 defendants want the ability to disclose to the jury the
13 consideration that's disclosed in the assignment, and the
14 plaintiffs oppose that.

15 Have I identified the issue correctly?

16 MR. SLATER: Hello, Your Honor. It's Adam Slater for
17 the plaintiffs.

18 I think you've identified a part of it. And I have
19 positive news for Your Honor; that myself and Mr. Ostfeld were
20 able to speak during the course of the day, and I believe that
21 we've reached an agreement as to how to handle the issue,
22 assuming that it's acceptable to the Court.

23 THE COURT: That's wonderful news.

24 All right.

25 MR. SLATER: So to boil it all down, this is what I

1 believe we've agreed to, and then Greg could obviously -- or
2 Mr. Ostfeld could obviously tell you if I got it right.

3 We are going to produce to the defense the assignment
4 documents, which I think are the purchase agreements, which I
5 think that you asked me earlier, Greg, if that was it. I think
6 that's the documents that actually has the consideration that
7 was paid.

8 We're going to have those documents provided to the
9 defense by Monday close of business, and they're going to be
10 provided pursuant to the protective order, attorneys' eyes only
11 in this instance. And we're going to let them have them
12 unredacted so they can see what the consideration is, to see if
13 our representations have been correct.

14 And my understanding is that, assuming that the
15 consideration is what we've represented, which is it's in the
16 seven figures for both assignments, the next phase would be to
17 address the part that Your Honor was asking about, which is
18 whether or to what extent that consideration would be disclosed
19 to the jury.

20 And we would discuss it once they see the documents
21 and determine whether we can work that out. If we can't, which
22 I think we probably won't, we see it as essentially an
23 in-limine ruling under a 403 analysis probably for Judge Bumb.
24 Obviously Your Honor could do it too, but since she was
25 handling the MILs, it seemed like that would be an issue that

1 she could probably address at the September 9th case management
2 conference in terms of: Does the jury see the consideration or
3 get to know what it was? And what, if anything, whether they
4 see it or not, what would the jury be told by the Court in that
5 regard? And that would be the extent of it.

6 The plaintiffs, as we've represented in our papers,
7 we are going to obviously tell the jury who MSP is; that they
8 did get assignments from Emblem and SummaCare. Those facts
9 will be before the jury.

10 But other than the 403 issue that we've talked about
11 and assuming that the consideration is what we said, we would
12 not be trying to the jury the question of whether or not the
13 assignments are valid, as we've discussed, and that would not
14 be an issue that gets tried.

15 I'll stop there so I don't say too much more and turn
16 myself into circles, but that's my understanding of what we
17 agreed to.

18 THE COURT: All right. Greg?

19 MR. OSTFELD: Thank you, Judge. Yeah, I think that
20 accurately summarizes it. Once we get the assignments, we'll
21 be able to review them. And it's really going to come down to
22 two questions, you know, is there a contested question
23 involving the assignments that's going to be submitted to the
24 jury. And I think we would have a disagreement on that. If we
25 believe that there's still a contested issue such as the

1 adequacy of the consideration, that's something we'll assess
2 when we get the documents.

3 And then whether or not there's a contested issue, I
4 think it's going to be defendants' view that as part of the
5 background, the jury should be informed of the consideration.
6 And I think plaintiffs take a different view on that. So
7 either way, I think we anticipate there will be a narrower
8 question that needs to be addressed through 403 practice. It's
9 just, you know, kind of what the specifics of that question are
10 and whether it will be Your Honor addressing them or Judge Bumb
11 addressing them.

12 THE COURT: All right. Now, that was the solution I
13 was going to propose anyway, so...

14 MR. SLATER: We were reading your mind, Judge.

15 (Laughter.)

16 MR. SLATER: We've been working on that technology.

17 THE COURT: No. I think this is an appropriate, at
18 least interim, resolution, that gets the information to the
19 defense that they're seeking and they have been assiduously
20 seeking, and protects the plaintiff from undue prejudice at
21 this point in time. And let's evolve the issue to a point
22 where it may need Judge Bumb's final decision.

23 All right?

24 MR. SLATER: Thank you so much, Judge.

25 MR. OSTFELD: Thank you.

1 THE COURT: Thank you.

2 MR. SLATER: Sorry to disappoint you that it's not a
3 longer argument. I'm sure you were looking forward to it this
4 Friday afternoon.

5 THE COURT: Oh, I had set aside -- I told my wife I
6 wouldn't be home till about 8:00.

7 (Laughter.)

8 MR. SLATER: Nobody will tell her. As far as we
9 know, this went till 7:55 tonight. We're not involved.

10 THE COURT: Okay. Well, thank you all very much for
11 working it out, at least this far. I think it is an
12 appropriate resolution. Get the information to them, to the
13 defense, by close of business Monday, and we'll go from there.

14 I won't issue an order, any order yet. We'll wait to
15 hear from you. Because I know you still have Motion in Limine
16 34 out there, and it is related to the questions that were
17 raised here in terms of disclosure to the jury.

18 All right.

19 MR. SLATER: Understood. I think that's fine, Your
20 Honor. We have the transcript. I think we've all set forth
21 our positions. We're certainly bound to them, so I don't think
22 you need an order on this one.

23 MR. OSTFELD: We'll agree.

24 THE COURT: We'll inform Judge Bumb of this interim
25 resolution.

1 MR. SLATER: Thank you very much.

2 THE COURT: Thank you all.

3 MR. OSTFELD: Thank you, Judge. Have a nice weekend,
4 all.

5 THE COURT: Yes. Bye-bye.

6 MR. SLATER: Thank you. Bye-bye, Judge.

7 (Proceedings concluded at 4:38 p.m.)

8 - - - - -
9 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**
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10 I certify that the foregoing is a correct transcript
11 from the record of proceedings in the above-entitled matter.
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14

15 /S/John J. Kurz, RDR-RMR-CRR-CRC

August 26, 2024

16 Court Reporter/Transcriber
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Wholesaler [1] 3/4**wife** [1] 8/5**will** [4] 6/9 7/7 7/10 8/8**WILLIAM** [1] 3/9**won't** [2] 5/22 8/14**wonderful** [1] 4/23**work** [1] 5/21**working** [2] 7/16 8/11**wouldn't** [1] 8/6**Y****Yeah** [1] 6/19**Yes** [3] 4/6 4/7 9/5**yet** [1] 8/14**York** [1] 2/9**you** [20]**you've** [1] 4/18**Z****Zhejiang** [1] 2/10**ZHP** [1] 2/11